

AMENDED IN SENATE MARCH 15, 2016

SENATE BILL

No. 878

Introduced by Senator Leyva
(Principal coauthor: Assembly Member Chiu)

January 15, 2016

An act to ~~amend~~ ~~add~~ Section ~~600~~ of 510.5 to the Labor Code, relating to private employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 878, as amended, Leyva. ~~Railroads: employee hours. Work hours: scheduling.~~

Existing law governs the relationship between an employer and an employee with regard to hiring, promotion, discipline, wages and hours, working conditions, and administrative and judicial remedies. Existing law authorizes the Labor Commissioner to investigate employee complaints and to conduct a hearing in any action to recover wages, penalties, and other demands for compensation.

This bill would require an employer, which includes a grocery store establishment, restaurant, or retail store establishment, to provide its employees with a work schedule at least 7 calendar days prior to the first shift on that work schedule, except as specified. The bill would require an employer, except as specified, to pay its employees modification pay for each previously scheduled shift that the employer cancels or moves to another date or time, for any previously unscheduled shift that the employer requires an employee to work, or for each on-call shift for which an employee is required to be available but is not called in to work that shift. The bill would require an employer to post a poster containing specified information regarding an employee's right to receive modification pay and would require the Labor Commissioner

to create the poster and make it available. The bill would define terms for those purposes, including, among others, a grocery store establishment, restaurant, or retail store establishment.

The bill would require the Labor Commissioner to enforce these requirements, including the investigation, mitigation, and relief of violations of these requirements. The bill would authorize the Labor Commissioner to impose specified administrative fines for violations and would authorize the commissioner, the Attorney General, an employee or person aggrieved by a violation of these provisions, or an entity a member of which is aggrieved by a violation of these provisions to recover specified civil penalties against an offender who violated these provisions on behalf of the aggrieved, as well as attorney’s fees, costs, and interest.

The bill would not apply to certain categories of employees who meet specified requirements.

Existing law regulates railroad employee hours, and sets forth various penalties for violation of those provisions:

~~This bill would make nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 510.5 is added to the Labor Code, to read:
- 2 510.5. (a) This section shall be known, and may be cited as,
- 3 the Reliable Scheduling Act of 2016.
- 4 (b) The provisions of this section are in addition to and
- 5 independent of any other rights, remedies, or procedures available
- 6 under any other law and do not diminish, alter, or negate any other
- 7 legal rights, remedies, or procedures available to an aggrieved
- 8 person.
- 9 (c) For the purposes of this section, the following terms have
- 10 the following meanings:
- 11 (1) “Employee” means any individual except those exempt from
- 12 the payment of an overtime rate of compensation for executive,
- 13 administrative, and professional employees pursuant to wage
- 14 orders by the Industrial Welfare Commission, as described in
- 15 Section 515.
- 16 (2) “Employer” means a grocery store establishment, a
- 17 restaurant, or a retail store establishment.

1 (3) “Grocery store establishment” means a physical store within
2 the state that sells primarily household foodstuffs for offsite
3 consumption, including, but not limited to, the sale of fresh
4 produce, meats, poultry, fish, deli products, dairy products, canned
5 foods, dry foods, beverages, and baked or prepared foods. Other
6 household supplies or products are secondary to the primary
7 purpose of food sales.

8 (4) “Merchandise” means material goods or consumables.

9 (5) (A) “Modification pay” means compensation in addition
10 to an employee’s regular pay awarded for changes to an
11 employee’s work schedule with less than seven days’ notice, as
12 required in this section.

13 (B) Modification pay shall be calculated based on an employee’s
14 hourly wage. If the employee, in the 90 days of employment prior
15 to earning modification pay, had different hourly rates, was paid
16 by commission or piece rate, or was a nonexempt salaried
17 employee, the rate of pay to be used to calculate modification pay
18 shall be calculated by dividing the employee’s total wages, not
19 including overtime premium pay, by the employee’s total hours
20 worked in the full pay periods of the prior 90 days of employment.

21 (6) “Restaurant” means any retail establishment serving food
22 or beverages for onsite consumption, including, but not limited to,
23 a restaurant, coffee shop, cafeteria, or café.

24 (7) “Retail store establishment” means a physical store within
25 the state with more than 50 percent of its revenue generated from
26 merchandise subject to the state’s sales and use tax, including,
27 but not limited to, electronics, appliances, clothing, furniture,
28 sporting goods, health and personal products, or a limited line of
29 food products for onsite consumption.

30 (8) “Shift” means designated hours of work by an employee,
31 with a designated beginning time and ending time.

32 (9) “Work schedule” means a written or electronic document
33 that lists all scheduled shifts for all employees for at least 21
34 consecutive calendar days.

35 (d) (1) An employer shall provide its employees with a work
36 schedule at least seven calendar days prior to the first shift on that
37 work schedule.

38 (2) An employer may create separate work schedules for each
39 department.

1 (3) All hours of work for all employees of an employer shall
2 meet the definition of shift in subdivision (c).

3 (4) This section shall not be construed to prohibit an employer
4 from providing greater advance notice of an employee's work
5 schedule or changes in an employee's work schedule.

6 (5) This section shall not prohibit an employee from requesting
7 additional or fewer hours of work.

8 (e) An employer shall provide an employee with modification
9 pay, per shift, for each previously scheduled shift that the employer
10 cancels or moves to another date or time or for any previously
11 unscheduled shift that the employer requires an employee to work
12 as follows:

13 (1) If less than seven days' notice but more than 24 hours' notice
14 is given to the employee, the employee shall receive modification
15 pay equal to or greater than one hour at the employee's regular
16 rate of pay.

17 (2) If less than 24 hours' notice is given to the employee, the
18 employee shall receive modification pay equal to or greater than
19 half of that shift's scheduled hours at the employee's regular rate
20 of pay, but in no event for less than two hours nor more than four
21 hours.

22 (3) Modification pay required by this subdivision shall be in
23 addition to an employee's regular pay for working that shift.

24 (f) Subdivision (e) shall not apply to changes in the scheduling
25 of rest periods, recovery periods, or meal periods.

26 (g) For each on-call shift for which an employee is required to
27 be available but is not called in to work that shift, an employee
28 shall receive modification pay equal to or greater than half of that
29 shift's scheduled hours at the employee's regular rate of pay.

30 (h) Subdivisions (e) and (g) shall not apply to shifts for which
31 an employee is compensated with reporting time pay as required
32 by any wage order of the Industrial Welfare Commission.

33 (i) The requirements in subdivisions (e) and (g) shall not apply,
34 and an employer shall not be deemed to have violated subdivision
35 (e) or (g), under any of the following circumstances:

36 (1) Operations cannot begin or continue due to threats to
37 employees or property, or when civil authorities recommend that
38 work not begin or continue.

1 (2) *Operations cannot begin or continue because public utilities*
2 *fail to supply electricity, water, or gas or there is a failure in the*
3 *public utilities or sewer system.*

4 (3) *Operations cannot begin or continue due to an act of God*
5 *or other cause not within the employer's control, including, but*
6 *not limited to, an earthquake or a state of emergency declared by*
7 *a local government or the Governor.*

8 (4) *Another employee previously scheduled to work that shift*
9 *is unable to work due to illness, vacation, or employer-provided*
10 *paid or unpaid time off required by existing law or bona fide*
11 *collective bargaining agreement when the employer did not receive*
12 *at least seven days' notice of the other employee's absence.*

13 (5) *Another employee previously scheduled to work that shift*
14 *has not reported to work on time, is fired, sent home as a*
15 *disciplinary action, or told to stay at home as a disciplinary action.*

16 (6) *Two employees have mutually agreed to trade shifts.*

17 (7) *The employer requires the employee to work overtime, such*
18 *as mandatory overtime.*

19 (j) (1) *In each workplace of the employer, the employer shall*
20 *display a poster in a conspicuous place containing all the*
21 *information in paragraph (2). The Labor Commissioner shall*
22 *create a poster containing the information in paragraph (2) and*
23 *shall make it available to all employers.*

24 (2) *The poster shall state all of the following:*

25 (A) *An employee of an employer is entitled to modification pay.*

26 (B) *The amount of modification pay provided for by this section.*

27 (C) *An employee has the right under this section to file a*
28 *complaint with the Labor Commissioner against an employer that*
29 *retaliates or discriminates against the employee.*

30 (3) *An employer that willfully violates paragraph (1) shall be*
31 *subject to a civil penalty of not more than one hundred dollars*
32 *(\$100) for each offense.*

33 (k) *An employer shall keep for at least three years records*
34 *documenting the hours worked and modification pay awarded and*
35 *shall allow the Labor Commissioner to access these records*
36 *pursuant to the requirements in Section 1174. An employer shall*
37 *make these records available to an employee in the same manner*
38 *as described in Section 226.*

39 (l) (1) *An employer shall not discharge, threaten to discharge,*
40 *demote, suspend, or in any manner discriminate against an*

1 *employee for filing a complaint with the appropriate enforcement*
2 *agency or alleging a violation of this section, cooperating in an*
3 *investigation or prosecution of an alleged violation of this section,*
4 *or opposing any policy, practice or act that is prohibited by this*
5 *section.*

6 *(2) There shall be a rebuttable presumption of unlawful*
7 *retaliation if an employer discharges, threatens to discharge,*
8 *demotes, suspends, or in any manner discriminates against an*
9 *employee within 30 days of any of the following:*

10 *(A) The filing of a complaint by the employee with the Labor*
11 *Commissioner or alleging a violation of this section.*

12 *(B) The cooperation of an employee with an investigation or*
13 *prosecution of an alleged violation of this section.*

14 *(C) Opposition by the employee to a policy, practice, or act that*
15 *is prohibited by this section.*

16 *(m) The Labor Commissioner shall enforce this section,*
17 *including investigating an alleged violation and ordering*
18 *appropriate temporary relief to mitigate the violation or to*
19 *maintain the status quo, pending the completion of a full*
20 *investigation or hearing.*

21 *(n) (1) If the Labor Commissioner, after a hearing that contains*
22 *adequate safeguards to ensure that the parties are afforded due*
23 *process, determines that a violation of this section has occurred,*
24 *he or she may order any appropriate relief, including, but not*
25 *limited to, reinstatement, backpay, the payment of modification*
26 *pay unlawfully withheld, and the payment of an additional sum in*
27 *the form of an administrative penalty, to an employee or other*
28 *person whose rights under this section were violated.*

29 *(2) If modification pay was unlawfully withheld, the dollar*
30 *amount of modification pay withheld from the employee multiplied*
31 *by three or two hundred fifty dollars (\$250), whichever amount is*
32 *greater, but not to exceed an aggregate penalty of four thousand*
33 *dollars (\$4,000), shall be included in the administrative penalty.*

34 *(3) If a violation of this section results in other harm to the*
35 *employee or person, such as discharge from employment, or*
36 *otherwise results in a violation of the rights of the employee or*
37 *person, the administrative penalty shall include a sum of fifty*
38 *dollars (\$50) for each day or portion thereof that the violation*
39 *occurred or continued, not to exceed an aggregate penalty of four*
40 *thousand dollars (\$4,000).*

1 (o) Where prompt compliance by an employer is not
2 forthcoming, the Labor Commissioner may take any appropriate
3 enforcement action to secure compliance, including the filing of
4 a civil action. In compensation to the state for the costs of
5 investigating and remedying the violation, the commissioner may
6 order the violating employer to pay to the state a sum of not more
7 than fifty dollars (\$50) for each day or portion of a day a violation
8 occurs or continues for each employee or other person whose
9 rights under this section were violated.

10 (p) An employee or other person may report to the Labor
11 Commissioner a suspected violation of this section. The
12 commissioner shall encourage reporting pursuant to this
13 subdivision by keeping confidential, to the maximum extent
14 permitted by applicable law, the name and other identifying
15 information of the employee or person reporting the violation.
16 However, the commissioner may disclose that employee's or
17 person's name and identifying information as necessary to enforce
18 this section or for other appropriate purposes, upon the
19 authorization of that employee or person.

20 (q) The Labor Commissioner, the Attorney General, an employee
21 or person aggrieved by a violation of this section, or an entity a
22 member of which is aggrieved by a violation of this section may
23 bring a civil action in a court of competent jurisdiction against
24 the employer or other person violating this section and, upon
25 prevailing, shall be entitled to collect legal or equitable relief on
26 behalf of the aggrieved as may be appropriate to remedy the
27 violation, including, but not limited to, reinstatement, backpay,
28 the payment of modification pay unlawfully withheld, the payment
29 of an additional sum, not to exceed an aggregate penalty of four
30 thousand dollars (\$4,000), as liquidated damages in the amount
31 of fifty dollars (\$50) to each employee or person whose rights
32 under this section were violated for each day or portion thereof
33 that the violation occurred or continued, plus, if the employer has
34 unlawfully withheld modification pay to an employee, the dollar
35 amount of modification pay withheld from the employee multiplied
36 by three or two hundred fifty dollars (\$250), whichever amount is
37 greater, and reinstatement in employment or injunctive relief, and
38 further shall be awarded reasonable attorney's fees and costs,
39 provided, however, that any person or entity enforcing this section
40 on behalf of the public as provided for under applicable state law

1 shall, upon prevailing, be entitled only to equitable, injunctive, or
2 restitutionary relief, and reasonable attorney’s fees and costs.

3 (r) In an administrative or civil action brought under this
4 section, the Labor Commissioner or court, as the case may be,
5 shall award interest on all amounts due and unpaid at the rate of
6 interest specified in subdivision (b) of Section 3289 of the Civil
7 Code.

8 (s) The remedies, penalties, and procedures provided under this
9 section are cumulative.

10 (t) The Labor Commissioner may promulgate all regulations
11 and rules of practice and procedures necessary to carry out the
12 provisions of this section.

13 (u) A violation of this section shall not be a misdemeanor under
14 Section 553.

15 SECTION 1. ~~Section 600 of the Labor Code is amended to~~
16 ~~read:~~

17 ~~600. As used in this chapter, unless the context otherwise~~
18 ~~indicates, the following definitions shall apply:~~

19 (a) ~~“Railroad” means any steam railroad, electric railroad, or~~
20 ~~railway, operated in whole or in part in this state.~~

21 (b) ~~“Railroad corporation” means a corporation or receiver~~
22 ~~operating a railroad.~~

23 (c) ~~“Trainman” means a conductor, motorman, engineer,~~
24 ~~fireman, brakeman, train dispatcher, or telegraph operator,~~
25 ~~employed by or working in connection with a railroad.~~